obvious to all. As previously noted, the Seventh Circuit Court of Appeals currently has under advisement the Northern District of Indiana's opinion in Books, the resolution of which promises to have a significant impact on the resolution of this case. In light of that impending ruling, maintenance of the status quo is altogether prudent. We believe this result to be fully consonant with the public interest as well.

Conclusion

Having determined that the Plaintiffs have a reasonable likelihood of succeeding on the merits of their First Amendment challenge, that they have no adequate remedy at law and would suffer irreparable harm if preliminary relief were to be denied, that the balance of the harms favors the Plaintiffs, and that the public interest is in line with granting the Plaintiffs their requested injunctive relief, we hold that the Plaintiffs are entitled to their requested relief. Plaintiffs' motion for preliminary injunction is GRANTED. Pending a resolution of the merits of this case or until further order of the Court, we Hereby ENJOIN the State from henceforth taking any further steps to erect the proposed monument containing the Ten Commandments, the Bill of Rights, and the Preamble to the Indiana Constitution on the Statehouse grounds.

It is so ORDERED this 28th day of July 2000.

/s/ Sarah Evans Barker
SARAH EVANS BARKER, CHIEF JUDGE
United States District Court
Southern District of Indiana

Copy to:

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United States Court Of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

October 2, 2001

Before

Hon. JOEL M. FLAUM, *Chief Judge*

Hon. WILLIAM J. BAUER, *Circuit Judge*

Hon. JOHN L. COFFEY, *Circuit Judge*

No. 00-3011

INDIANA CIVIL LIBERTIES UNION, et al., *Plaintiffs-Appellees*, *v.*	Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.
FRANK O'BANNON, GOVERNOR OF INDIANA, *Defendant-Appellant.*	No. 00 C 811 Sarah Evans Barker, *Judge*.

ORDER

On consideration of the petition for rehearing *en banc* filed in the above-captioned case by the defendant-appellant, and the response thereto, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny. Therefore, the petition for rehearing is hereby DENIED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA CIVIL LIBERTIES UNION, *et al.*,	)	
Plaintiffs,	)	
v.	)	No. IP-00-0811-C B/S
FRANK O'BANNON, *et al.*,	)	
Defendant.	)	

STIPULATIONS OF FACT

Come now the parties and stipulate to the following facts. Although the parties stipulate to these facts, they do not agree that they are necessarily relevant to the resolution of this matter and reserve the right to object to their use on that ground. These stipulations only bind the parties for purposes of the preliminary injunction.

1. Indianapolis is the capital of the State of Indiana.

2. The Indiana Statehouse is located in Indianapolis and contains the office of the Governor, the Indiana General Assembly and the offices of the members of the General Assembly, the Indiana Supreme Court and the offices of the justices, the Indiana Court of Appeals and offices of some of the judges of the Indiana Court of Appeals as well as the offices of certain other Indiana constitutional and statutory officeholders.

3. The Statehouse is located between Ohio Street to the North, Washington Street to the South, Capitol Avenue to its East and Senate Avenue to the West.

4. Immediately to the North of Washington Street there is a large plot of land on the grounds of the Statehouse immediately in front of the South entrance to the Statehouse. It is approximately 1.93 acres.

5. Washington Street was formerly U.S. 40.

6. The attached document, Exhibit 1, accurately quotes the comments of Governor Frank O'Bannon.

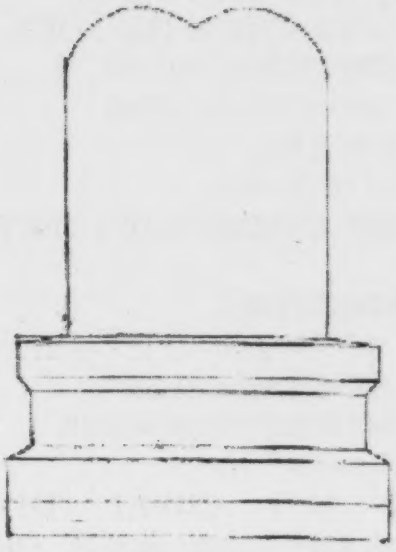
7. The planned monument will be made of two blocks of Indiana limestone and will be approximately 11,500 pounds in weight.

8. The monument will consist of a rectangular base block which will be approximately 6'7" wide, 4'7" deep and 2'8" in height.

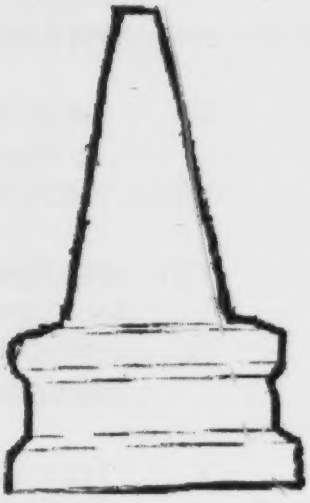
9. On top of this rectangular block will be a four sided block of limestone that will be tapered at its highest point. The block will be about 4'4" tall and will go from 3' wide at its base to 6" wide at its highest point. The two larger sides of the block will be approximately 3'7" in width. The two small sides will taper from approximately 2 ½ feet in width to approximately 6" in width.

10. Taken together, therefore, the monument, including both blocks, will be approximately 7' wide at its highest point and 6'7" wide at its widest point. It will be more than four feet deep at its deepest point.

It will appear as indicated below.



Front View



Side View

11. One large face of the monument will have inscribed on it the following:

TEN COMMANDMENTS

I. THOU SHALT HAVE NO OTHER GODS BEFORE ME

II. THOU SHALT NOT MAKE UNTO THEE ANY GRAVEN IMAGE

III. THOU SHALT NOT TAKE THE NAME OF THE LORD THY GOD IN VAIN

IV. REMEMBER THE SABBATH DAY TO KEEP IT HOLY

V. HONOR THY FATHER AND THY MOTHER THAT THY DAYS MAY BE LONG IN THE LAND WHICH THE LORD THY GOD GIVETH THEE

VI. THOU SHALT NOT KILL

VII. THOU SHALT NOT COMMIT ADULTERY

VIII. THOU SHALT NOT STEAL

IX. THOU SHALT NOT BEAR FALSE WITNESS AGAINST THY NEIGHBOR

X. THOU SHALT NOT COVET THY NEIGHBORS HOUSE OR WIFE OR ANYTHING THAT IS THEY NEIGHBORS

12. There will be nothing else on this side of the monument.

13. It is unclear how large the lettering spelling the "Ten Commandments" on the monument will be. The text of the monument itself will be approximately one (1) inch in height.

14. On the other large face of the monument there will be carved into the limestone the text of the Bill of Rights underneath a heading entitled "Bill of Rights".

15. The text will be within the same tablet shape as the Ten Commandments. There will be nothing else on this side of the monument.

16. Because the text of the Bill of Rights is longer than that of the Ten Commandments the lettering of the

text of the Bill of Rights will be approximately 5/8" high.

17. On one of the small sides of the monument will be carved the following:

> Gift of the Indiana Limestone Industry — 2000 A.D.
>
> This monument replaces one donated by the Aeries and Auxiliaries of the Indiana Fraternal Order of the Eagles on October 25, 1958.

18. It is unclear how large the above lettering will be. But, it will be balanced with the rest of the monument.

19. On the other side of the monument will be carved the Preamble to the Indiana Constitution. It will not be labeled in any way and will therefore indicate:

> To the end, that justice be established, public order maintained, and liberty perpetuated: We, the People of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution.

20. At this time it is not clear how large the above lettering will be and whether all, or a portion of the text will be in large or small type. However, it will be balanced with the rest of the monument.

21. The monument is being constructed with donated labor and materials by various members of the limestone industry in, and around, the Bedford, Indiana area.

22. State Representative Brent Steele worked out an initial design for the monument and this design was refined by Hoosier Drafting, a design firm that donated its labor.

23. The monument will be available for delivery to the State of Indiana no earlier than mid-August of 2000.

24. From 1958 until 1991 a monument containing the Ten Commandments was located in the southwest portion of the Statehouse lawn. It had been donated by the Fraternal Order of Eagles and was knocked over by vandalism in 1991.

25. This former monument was 7' high, 3' wide and flanked by smaller tablets which listed all the chapters and auxiliaries of the Eagles in Indiana.

26. One of the plaintiffs, Steven Schroeder, was convicted of misdemeanor criminal mischief for vandalizing the former monument.

27. Representative Steele intended the text of the Ten Commandments on the new monument to be identical to that on the former monument.

28. The new monument will be located near the site of the former monument near the Southwest corner of the grounds of the Statehouse. The exact location has not yet been determined. It is also still not clear how the new monument will face.

29. The new monument will be installed with donated labor and its installation will not cost the State of Indiana anything.

30. The attached diagram, Exhibit 2, demonstrates the location of other monuments and points of interest on the exterior grounds of the Statehouse along with their photographs.

31. On the interior of the Statehouse there is a plaque stating "In God We Trust" on the side of one of the pillars in the Rotunda. The plaque is approximately 8 ½" by 18". A similar plaque is contained in the Courtroom of the Indiana Supreme Court which is located on the Third Floor of the Statehouse.

32. On the Fourth Floor of the Statehouse there is a room designated as a "Meditation Room." It is used for, among other things, religious worship as well as meditation.

33. Exhibit 2 is drawn to scale. One inch on Exhibit 2 is approximately 100 feet.

34. The site of the former Ten Commandments monument is within the triangular portion of grass shown on Exhibit 2 as containing the Schricker tree (numbered 3 on Exhibit 2).

35. The site is approximately 113 feet north of the north edge of the Washington Street sidewalk, approximately 83 feet south of the middle of the east-west walkway that touches the South side of the Statehouse, and approximately 19 feet east of the Senate Avenue sidewalk.

36. The site of the former monument is approximately 41 feet away from Governor Schricker's tree (No. 3 on Exhibit 2) and 92 feet away from the National Historic Civil Engineering Landmark (No. 4 on Exhibit 2).

37. The Christopher Columbus monument (No. 2 on Exhibit 2) is approximately 43 feet north of the east-west sidewalk that touches the South side of the Statehouse.

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FRANK O'BANNON
GOVERNOR

FOR IMMEDIATE RELEASE Tuesday, March 14, 2000

New monument will include Bill of Rights

O'Bannon signs 10 Commandments bill; outlines new Statehouse monument design

Governor Frank O'Bannon today signed legislation to let state and local governments display the 10 Commandments in a historical context.

At the same time, O'Bannon announced that a new monument will be erected on the Statehouse lawn this summer, featuring not only the 10 Commandments but also the preamble to the U.S. Constitution and the Bill of Rights.

"For more than three decades, a monument inscribed with the 10 Commandments stood on the Statehouse lawn as a reminder of some of our nation's core values," the governor said.

"Soon those words will stand alongside the abiding principles of our form of government, especially its protections of individual rights," O'Bannon added. "They're ideals we all need to be reminded of from time to time."

Effective July 1, House Enrolled Act 1180 permits units of government, including schools, to display the Ten Commandments, if they so choose, along with other documents of historical significance that have formed and influenced the legal or governmental system of the United States.

The legislation received overwhelming bipartisan support, adopted by votes of 90-6 in the Indiana House of Representatives and 40-10 in the state Senate.

Representative Jerry Denbo authored the bill, whose lead sponsor was state Senator Kent Adams. State Representative Brent Steele co-authored and is spearheading the monument project.

"Our entire Statehouse is rich with other monuments to our heritage," Steele said. "This new monument will soon take its proper place alongside such historic figures as Oliver P. Morton, Thomas A. Hendricks, George Washington and Christopher Columbus."

"The new monument will be an integral part of the Statehouse setting, which honors the history of our state and our nation," O'Bannon added.

Also displayed on the Statehouse lawn are memorials to returning veterans of the Civil War and to the wartime efforts of Hoosier women.

Other markers note the significance of U.S. Highway 40, which passes the Statehouse. In the 1800s it was known as the National Road, and Congress used it to promote the young nation's westward settlement.

In addition to the historical text to be inscribed on the new monument, Steele said it will honor the Indiana State Aerie and Auxiliaries of the Fraternal Order of Eagles, based in Anderson, which donated an earlier 10 Commandments monument to the state in 1958.

"In the fifties, Eagles lodges across the country donated monuments like the one we had to their home states," Steele said. "We thought it only right that we note on the new monument that is replaces one given so generously before."

After gracing the Statehouse lawn for three decades, the original monument was broken in a series of acts of vandalism. The Eagles reclaimed and repaired it at a cost of about $2,500. It now stands outside the Anderson lodge, somewhat battered but still at its original 6-foot height and 5-foot width.

The new monument, valued at more than $20,000, will be about 4 feet high, 5 feet wide and 4 feet deep. It will stand on the spot formerly occupied by the Eagles' monument.

Jack R. Moore, state conductor of the Indiana State Aerie, Fraternal Order of Eagles, and an officer of the Anderson Lodge, said he looks forward to the dedication ceremony for the new monument.

"We were proud to have donated the first monument, and we're really pleased to be recognized on the new one," Moore said. "It's a wonderful thing for the state."

To be carved from a 9-ton block of Lawrence County limestone, the monument is planned as a gift to the state solicited by Representative Steele from five Southern

Indiana companies. They will provide the stone, design and carve it and then transport and install it.

"On behalf of all Hoosiers, I want to thank Representative Steele, the Elliott Stone Company, Evans Limestone Company, Watterson Monument Service, Hoosier Drafting and Charles Jones, engineer, for their generosity," O'Bannon said. "The monument they envision will be a wonderful addition to the many historic markers on the Statehouse grounds.

Reporters'
contact: Phil Bremen or Cheryl Reed, 317-232-4578

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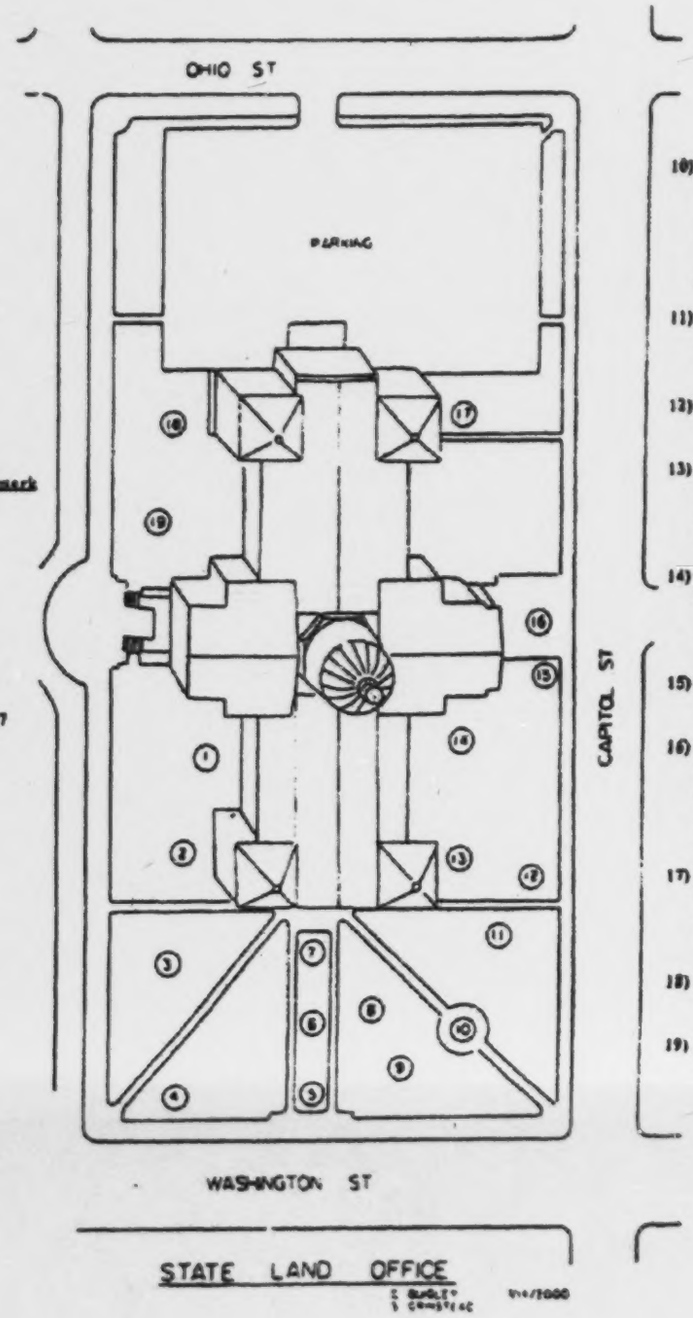

1) Each Governor Plant a Tree
Governor Henry F. Schricker
Dedicated by Albert Williams
Knox American Legion Post
April 29, 1946
Plaque 24" x 16"

2) Christopher Columbus Monument
Erected 1920 by Italians of Indiana
6' 6 ½" x 6' 8 ½" base x 12' tall

3) Each Governor Plant a Tree
Governor Henry F. Schricker
Dedicated April 14, 1944
Plaque 1' x 1'

4) National Historic Civil Engineering Landmark
Dedicated October 12, 1976
4' tall x 2' wide

5) The National Road Monument
7' tall x 3' wide

6) George Washington Monument
Dedicated by: the Freemasons of Indiana,
The George Washington Commission, and
The Grand Lodge Free and Accepted
Masons of the State of Indiana, May 19, 1927
5' 6" wide x 3 ½' deep x 5' tall

7) Robert Dale Owen Monument
Dedicated 1911
3' ¼" wide x 3' ½" deep x 5' tall

8) Martin H. Miller
Tree dedication April 30, 1982
Plaque 2' ¼" x 1' 5"

9) Governor Matthew E. Welsh
Tree dedication April 14, 1961
Sponsored by Assoc. of Soil and Water
Conservation Districts of Indiana and
Explorer Post, B.S.A. of Indianapolis
Plaque 1' 7" x 1' 2"

10) Thomas Andrew Hendricks Statue
Erected 1890
Vice President 1885
Governor 1873-77
Senator 1863-69
20' wide x 12' deep x 30' tall

11) Governor Ralph F. Gates
Tree dedication April 26, 1946
Plaque 1' x 1'

12) Unknown Marker
Plaque 1' 1" x 1' x 1"

13) Governor Townsend
Tree dedication January 26, 1940
By North Judson Legion Post
Plaque 8" x 10"

14) Bicentennial Mesa Tree
Governor Otis Bowen
Tree dedication April 9, 1976
Plaque 1' 2" x 1' 12"

15) State Capitol Historical Marker
3' 9" x 3' 6" x 7' tall

16) Oliver Perry Morton Statue
Dedicated by The Grand Army of the Republ
Governor 1861-67
Senator 1867-77
20' x 15' x 35' height

17) Lt. Governor Crawford F. Parker
Tree dedication April 10, 1959
Contributed by Indiana Arborist Assoc.
Plaque 1' 8" x 1' 1"

18) Unknown Marker
Plaque 2' x 2'

19) Coal Miner Statue
3' x 3' x 11' - 1966